

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Bufter	Team: Team # 1	CCRB Case #: 200717869	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 12/01/2007 6:00 AM	Location of Incident: § 87(2)(b)	Precinct: 81	18 Mo. SOL 6/1/2009	EO SOL 6/1/2009	
Date/Time CV Reported Fri, 12/07/2007 7:29 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 12/12/2007 12:12 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Daniel Sbarra	05029	920813	NARCBBN
2. DT3 Fawad Khan	07739	925537	NARCBBN
3. DT3 Matthew Savage	06484	926077	NARCBBN
4. DT3 Frank Galati	02819	928335	NARCBBN
5. Officers			NARCBBN
6. An officer			
7. CPT Michael Lipetri	00000	906647	NARCBBN
8. POF Tanisha Phillips	21379	932203	NARCBBN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DT3 James Delumen	03621	922213	NARCBBN
2. DT3 Robert Livingston	04541	925619	NARCBBN
3. POM Shane Killilea	30946	927030	NARCBBN
4. POM William Dean	06379	924258	NARCBBN
5. DT3 Andrew Erato	02395	925243	NARCBBN

Officer(s)	Allegation	Investigator Recommendation
A.CPT Michael Lipetri	Abuse: Cpt. Michael Lipetri authorized the entry and search of § 87(2)(b)	
B.CPT Michael Lipetri	Force: Cpt. Michael Lipetri used physical force against § 87(2)(b)	
C.DT3 Frank Galati	Force: Det. Frank Galati used physical force against § 87(2)(b)	
D.DT3 Frank Galati	Discourtesy: Det. Frank Galati spoke obscenely and/or rudely to § 87(2)(b)	
E. An officer	Discourtesy: An officer spoke obscenely and/or rudely to § 87(2)(b)	
F. Officers	Abuse: Officers damaged § 87(2)(b)'s property.	

Officer(s)	Allegation	Investigator Recommendation
G.SGT Daniel Sbarra	Abuse: Sgt. Daniel Sbarra authorized the strip-searches of § 87(2)(b) and § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Synopsis

§ 87(2)(b) contacted the Internal Affairs Bureau on December 7, 2007 to file a complaint against members of the New York City Police Department. His complaint was assigned log number 07-47017 and referred to the Civilian Complaint Review Board where it was received on December 12, 2007.

§ 87(2)(b) was in his bedroom at § 87(2)(b) in Brooklyn on December 1, 2007 at 6:00am when he heard banging on his front door. Twelve officers from Narcotics Borough Brooklyn North, under the supervision of Cpt. Michael Lipetri, entered § 87(2)(b) residence pursuant to a search warrant (***Allegation A***). Several officers instructed § 87(2)(b) to move back and get on the ground. After he moved back, the officers entered into his residence to secure the premises. Cpt. Lipetri attempted to handcuff § 87(2)(b) refused to provide his hands and both men struggled on the ground. Det. Frank Galati assisted Cpt. Lipetri, and both officers pulled on § 87(2)(b) arms until they successfully applied handcuffs (***Allegations B and C***). § 87(2)(b) further alleged that Det. Galati kicked his arm (***Allegation C, cont'd.***) and said, “Put your hands behind your fucking back.” (***Allegation D***) After § 87(2)(b) was handcuffed, he was moved to the kitchen. When § 87(2)(b) complained that his arm hurt, an officer allegedly told him, “I don’t give a fuck.” (***Allegation E***). § 87(2)(b) informed the officers that he was having trouble breathing due to asthma. Officers requested an ambulance which responded in several minutes. Det. Matthew Savage and Det. Robert Livingston accompanied § 87(2)(b) to the hospital. The remaining officers stayed and searched § 87(2)(b). During the course of the search, officers allegedly used a sledgehammer to open a safe belonging to § 87(2)(b) and damaged other items that were thrown about, including picture frames (***Allegation F***). § 87(2)(b) wife, § 87(2)(b) as well as his daughter, § 87(2)(b) were placed under arrest and transported to the 81st Precinct stationhouse, where Sgt. Daniel Sbarra directed PO Tanisha Phillips to strip search both of them (***Allegation G***). § 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Summary of Complaint

§ 87(2)(b) CCRB Statement

§ 87(2)(b) a § 87(2)(b), filed a complaint with the IAB on December 7, 2007, in which he briefly stated that officers beat him and searched his apartment (encl9). He provided a phone statement on December 18, 2007 (encl. 12) and was interviewed at CCRB on December 21, 2007(encl. 13). His statements had numerous inconsistencies, which are noted below.

On December 1, 2007, at or about 6:00am, § 87(2)(b) was using his asthma pump machine in his bedroom on the first floor at § 87(2)(b) a private house. He was not wearing a shirt, but was wearing jeans and possessed a bag of heroin in his right pocket. His wife, § 87(2)(b) was also in the room with him. She was asleep. § 87(2)(b) son, § 87(2)(b) § 87(2)(b) and nephew, § 87(2)(b) § 87(2)(b) § 87(2)(b), were in the living room. His daughter, § 87(2)(b) was asleep in her room, which is located on the second floor and is the first room to the right-hand side at the top of a staircase.

§ 87(2)(b) heard the officers “hammering” at his front door. This doorway opens to a short hallway that is about three feet wide, which then leads to the aforementioned staircase. § 87(2)(b) room is the first room to the right at the end of the hallway. He heard a voice say, “Police officer. Open the door.” § 87(2)(b) quickly went to the hallway and arrived at his front door, which he opened. Immediately, he placed his hands behind his neck because he knew that officers were about to enter and he wanted to comply and not get hurt. He also stepped back about 2½ feet, and, thus, was still in his hallway. Three officers rushed into the apartment. An officer, whom the investigation determined to be Cpt. Michael Lipetri (described by § 87(2)(b) as a 230lb, male white sergeant with green eyes and a round face) said, “Put your hands up,” and § 87(2)(b) said that they already were. Cpt. Lipetri then threw § 87(2)(b) on the floor.¹ Cpt. Lipetri then “rushed” § 87(2)(b) to the floor by getting behind § 87(2)(b) pushing his back and forcibly placing § 87(2)(b) face down to the ground. § 87(2)(b) knew that this officer was Cpt. Lipetri because he later briefly looked back and he saw Cpt. Lipetri, who was still attempting to place a cuff on § 87(2)(b) arms. § 87(2)(b) said, “Please don’t cuff me again because I can’t breath.”)

Once § 87(2)(b) was on the ground, Cpt. Lipetri’s knee was on § 87(2)(b) back. An officer identified by the investigation as Det. Frank Galati (described by § 87(2)(b) as male white, 5’10”, red hat) came to assist Cpt. Lipetri with handcuffing § 87(2)(b) who told the officers that he could not breathe and was asthmatic. Det. Galati was positioned to § 87(2)(b) left hand side and allegedly said, “Put your hands behind your fucking back,” and kicked his left arm once on his tricep. § 87(2)(b) stated that he had been on the ground for 5-10 minutes by this point in time. Officers were trying to physically place § 87(2)(b) arms behind his back, and instructing him to place his arms behind his back. When asked why it took 5-10 minutes for officers to place his arms behind his back, § 87(2)(b) said that he was pleading that he could not breath and was on the floor and, thus, incapable of making any physical movements.²

Initially, § 87(2)(b) stated that an officer choked him while he was on the ground. When thoroughly questioned about the incident again, he did not allege this. When directly questioned at the end of the interview, § 87(2)(b) claimed that Cpt. Lipetri had choked him by placing his arm underneath his neck when he moved his arm as the officer tried to place him in handcuffs. When confronted with the fact that he had earlier claimed to have never pulled his arm, § 87(2)(b) stated that he did move his right arm because his shoulder was hurting. § 87(2)(b) could not specify the exact part of Cpt. Lipetri’s arm that was on his neck. Cpt. Lipetri applied “not too much pressure” and § 87(2)(b) could still breathe. His arm was on § 87(2)(b) neck for 2-3 seconds.

After § 87(2)(b) was handcuffed, the officers left him on the ground for about 20 minutes to a half hour. Additional officers entered his apartment and awoke his wife and son. Ultimately, Cpt. Lipetri and Det. Galati lifted § 87(2)(b) off the ground, thus pulling a muscle in his right shoulder which had originally been aggravated while lifting weights a year earlier. When he said that his arm hurt, Cpt. Lipetri responded, “I don’t give a fuck.”

¹ Later in his interview, Mr. § 87(2)(b) stated that Cpt. Lipetri also told him to get on the floor, and Mr. § 87(2)(b) responded by asking whether the officer had a search warrant. Later, Mr. § 87(2)(b) stated that he complied and got onto the ground by placing his knees on the ground.

² Mr. § 87(2)(b) later admitted that he was trying to move his arms and that this prompted the officers to “get rough.” He then later stated that he never tried to pull his arms away from the officers.

Cpt. Lipetri took § 87(2)(b) to the kitchen and sat him down on a bench, near his son.³ Cpt. Lipetri, Det. Galati and an unidentified 230lb. male Hispanic officer were in the kitchen. The officers questioned § 87(2)(b) about his heroin use, and § 87(2)(b) acknowledged his addiction. The officers found two bags of heroin in the living room, one in his pocket and a few in the kitchen in a drawer by his medicine cabinet. § 87(2)(b) also observed officers search his first floor and basement. One officer used a sledgehammer to break open a safe, in which § 87(2)(b) kept \$3,000 worth of jewelry and rent money.

§ 87(2)(b) requested for the officers to give him water, but SGT1 said, “I’m not going to give you shit.” SGT1 called an ambulance.⁴ Once the ambulance arrived and EMTs came into the apartment, the officers placed shackles on § 87(2)(b) legs. A white male officer escorted § 87(2)(b) to the ambulance, where EMTs took § 87(2)(b) blood pressure and gave § 87(2)(b) a pump. § 87(2)(b) was transported to § 87(2)(b) Hospital. § 87(2)(b) saw a doctor and informed him that he had chest pain and that his pulled muscle and his shoulder also hurt. The doctor gave him an IV, steroids (“Prenazone” for his lungs), and medication for his asthma. When asked whether any other injuries were treated, § 87(2)(b) stated that the doctors asked him how he injured his left tricep. The doctors took X-rays of this injury and took blood samples. He was not prescribed any medication.

§ 87(2)(b) Photo Viewing

§ 87(2)(b) viewed a series of 15 photographs at the CCRB on May 27, 2008 (*encl. 13*). § 87(2)(b) viewed photographs of the following male officers, all of whom were assigned to the Brooklyn North 81 PCT warrant execution team on December 1, 2007: Cpt. Lipetri, Lt. Santangelo, Det. Delumen, Det. Khan, Det. Savage, Det. Erato, Sgt. Sbarra, Det. Galati, Det. Livingston, Det. Dean and PO Killilea. Four additional filler photographs were also included in the array.

§ 87(2)(b) insisted that Sgt. Sbarra (photo K) was the officer who threw him to the ground, placed his knee in § 87(2)(b) back and hit him in the back of the neck with his elbow. § 87(2)(b) believed that Sgt. Sbarra might have punched him upon initially entering the house, though he could not confirm this detail with any certainty. § 87(2)(b) alleged that Det. Delumen (photo I) kicked him in the arm and told him to “shut the fuck up.” Although § 87(2)(b) remembered that Det. Galati (photo N), Det. Khan (photo G) and Det. Livingston (photo O) were present, he did not make any allegations against them. He only recalled that they were present and participated in the search of the house.

Results of Investigation

Civilian Statements

§ 87(2)(b) CCRB Statement

§ 87(2)(b) a § 87(2)(b), was interviewed at the CCRB on December 21, 2007 (*encl. 16*). On December 1, 2007, § 87(2)(b) was sleeping in her bedroom on the first floor at § 87(2)(b) at 6:00am. § 87(2)(b) awoke when she heard her husband screaming, “Don’t hit me, I’m opening up the door.” She initially stated that she did not hear anything else, but then stated that she heard the officers say, “Don’t fucking move,” and later stated that she heard the officers pushing § 87(2)(b) to the kitchen and that the officers were waking up her son and nephew, who were sleeping in the room next to hers. When she woke up, officers were beating her husband who was on the ground.

One officer, identified by the investigation as Cpt. Lipetri, had his knee on § 87(2)(b) ribcage, and the other officers, all of whom were male whites, were holding his arms and legs down. § 87(2)(b) was lying on his left-hand side and his back was facing towards § 87(2)(b) bedroom. Cpt. Lipetri was right next to § 87(2)(b) with his knee on the side of § 87(2)(b) torso by his ribcage, and was also holding down

³ Initially, Mr. § 87(2)(b) stated that officers “dragged” him, but later made no mention of this. He also initially stated that officers said, “Shut the fuck up,” but again did not repeat this allegation.

⁴ Mr. § 87(2)(b) provided many estimates before conceding that he did not recall how long it took for the ambulance to arrive.

§ 87(2)(b) right shoulder. One unidentified officer was behind § 87(2)(b) and another was in front of § 87(2)(b) (i.e., in front of his stomach). One or possibly both officers kicked § 87(2)(b) in his stomach and legs.⁵ § 87(2)(b) did not see any additional force used against § 87(2)(b)⁶

§ 87(2)(b) stated that he was having an asthma attack, but the officers stated that they did not care and refused to provide him with an inhaler upon request. Officers stood him up and placed him in handcuffs. Officers escorted § 87(2)(b) towards the kitchen. A female black officer, identified through the investigation as PO Tanisha Phillips, came into § 87(2)(b) bedroom and informed her that officers were executing a search warrant because § 87(2)(b) had been selling drugs. PO Phillips questioned § 87(2)(b) who denied any knowledge of her husband's involvement with drugs, though she learned that officers recovered three or four bags of heroin from the apartment.

§ 87(2)(b) remained in her bedroom for an hour. At some point during this time, EMTs removed her husband to § 87(2)(b) Hospital. After an hour, PO Phillips and an unidentified male officer, PO5, removed her and § 87(2)(b) to an unmarked white van in which they were transported to the 81st Precinct stationhouse, where both she and her daughter were placed in the same cell; § 87(2)(b) § 87(2)(b) was placed in a separate cell. Ultimately, PO5 took § 87(2)(b) from her cell and transported her back to her house so she could "see how [the residence] looked so far." Upon arrival, another officer, noting the messy state of the residence, asked where the drugs were located. § 87(2)(b) again insisted that she did not know. PO5 escorted her back to the precinct. § 87(2)(b) arrived at the precinct twenty minutes later. § 87(2)(b) was released to her uncle and then twenty minutes later both § 87(2)(b) and § 87(2)(b) were transported to Central Booking in the same van. § 87(2)(b) complained about chest pain.

When § 87(2)(b) came home from Central Booking, she saw that picture frames were on the ground, and the apartment was "destroyed." Officers had stabbed her sofas with knives.

§ 87(2)(b) Photo Viewing

§ 87(2)(b) viewed an array composed of 15 photographs at the CCRB on May 27, 2008 (*encl. 17*). The array included the same officers that were shown to § 87(2)(b) though the photos were shown in a different order. § 87(2)(b) recognized Cpt. Lipetri (photo 12) as the officer who placed § 87(2)(b) on the ground and held him down with his knee on his back. He was "pushing around" and "hitting" § 87(2)(b) specified that he was initially on the ground, but then stood up and started to forcefully kick § 87(2)(b). He told § 87(2)(b) to "shut the fuck up" and informed him that he could make his life "a living hell." Sgt. Sbarra (photo 2) was the officer that held down § 87(2)(b) legs. Initially, § 87(2)(b) stated that Det. Killilea (photo 4) also held down § 87(2)(b) legs, but later stated that he did not. Regarding Det. Khan (photo 11) § 87(2)(b) noted only that he "looked familiar" and may have been present for the incident on December 1, 2007.

§ 87(2)(b) CCRB Statement

§ 87(2)(b) a § 87(2)(b) female Hispanic, was interviewed at the CCRB on December 21, 2007 (*encl. 18*). § 87(2)(b) statement was consistent with her mother's except where noted below.

On December 1, 2007, § 87(2)(b) was in her bedroom on the second story at § 87(2)(b) in Brooklyn. At 6:00AM she was about to get out of bed, when four male white plainclothes officers with flashlights entered her room and told her to put her hands up. She complied and the officers told her to get out of bed. Again, she complied, and the officers handcuffed her and brought her downstairs. As she passed by the hallway, she saw her father, who was sitting at the kitchen table in the dining space. He informed the officers that he needed his asthma pump, but the officers did not want to give it to him. Then, the officers placed her in her parent's bedroom with her mother, cousin, and brother.

⁵ Ms. § 87(2)(b) initially stated that "officers" were kicking her husband. When directly questioned later in the interview, she stated that only PO2 kicked him and that PO3 just held down his legs.

⁶ Mr. § 87(2)(b) earlier stated that eight officers in total came in and three pushed Mr. § 87(2)(b). She had also alleged that numerous officers had their knees in his ribcage area and were punching him.

After remaining in the bedroom for a half-hour, the officers brought her, § 87(2)(b) and § 87(2)(b) into the hallway. Her uncle who lives on the third floor, § 87(2)(b) came downstairs and officers gave him custody of § 87(2)(b) who was a minor. Shortly after § 87(2)(b) went back upstairs, an ambulance arrived because § 87(2)(b) had an asthma attack. EMTs removed her father from the house. He did not have any visible physical injuries, though he said that his cuffs were too tight and that his chest hurt. Fifteen minutes later, officers transported her, her mother and her cousin to the 81st Precinct stationhouse in a red van. An officer, identified through investigation as PO Tanisha Phillips, and another unidentified male officer transported them. At the precinct, PO Phillips had § 87(2)(b) and her mother and cousin line up and told another officer that they needed to be cuffed to a window where they were briefly questioned about their father's drug activity.

PO Phillips then took § 87(2)(b) and her mother to a room that had two cells. She told § 87(2)(b) to take off her shoe laces and then told her to pull up her shirt. § 87(2)(b) complied; she was not wearing a bra and her breasts were exposed. PO Phillips then instructed § 87(2)(b) to pull down her pajama pants. The pajama pants went below § 87(2)(b) knees. She was not wearing underwear, but an officer told her to squat down. § 87(2)(b) complied. As she squatted down, her shirt covered her exposed area below her pajama pants. PO2 said that she needed to see, and consequently lifted up § 87(2)(b) shirt. The officer repeated these instructions to her mother, who complied with them. The doors to the room were closed during these searches. After conducting the searches, she put her mother in a cell and then left.

After two hours, PO Phillips removed § 87(2)(b) from the cells at the behest of a sergeant. Her uncle, Roberto § 87(2)(b) arrived to pick up § 87(2)(b). Officers also permitted him to take custody of § 87(2)(b). § 87(2)(b) returned home at about 1PM. Everything was in disarray. There were clothes all over the entrance of the hallway. Books, coats and jackets were strewn about the stairs, drawers were flipped over in § 87(2)(b) mother and father's room. The living room sofa was flipped over and picture frames were broken.

Additional attempts to contact civilians

Both § 87(2) and § 87(2)(b) alleged that § 87(2) s uncle, § 87(2)(b) lived on the third floor of their building and came downstairs where officers turned over custody of § 87(2)(b) § 87(2)(b) to him. § 87(2)(b) provided a brief phone statement on January 10, 2008 and affirmed his presence. An interview was scheduled for January 18, 2008. § 87(2)(b) did not appear for this interview and a missed appointment letter was sent to him. As it was soon determined that his statement would not have any bearing on the dispositions of this complaint, no additional attempts were made to contact him.

Officer Statements

Cpt. Michael Lipetri

Cpt. Michael Lipetri, a § 87(2)(b), male white officer assigned to Narcotics Borough Brooklyn North, was interviewed at the CCRB on March 25, 2008 (encl. 26). On December 1, 2007, Cpt. Lipetri was assigned to a search warrant execution team in the 81st Precinct Narcotics Module. He was in plain clothes and could not recall his vehicle assignment. As a captain, he is not required to carry a memo book.

On December 1, 2007 at or about 6:00am, Cpt. Lipetri was part of a team that was executing a no-knock search warrant at § 87(2)(b). Prior to executing the warrant, the team met to discuss tactics for the no-knock entry. When the officers arrived, an officer—likely PO Killilea—used a Kelly tool to pry open a metal wrought-iron gate. The tool created noise and one of the officers subsequently yelled out that he saw movement in the window next to the location. The officers successfully popped the metal gate and proceeded to a second door, which led into the residence and was opened by a ram; Cpt. Lipetri could not recall which officer opened the door or whether a hydro tool had also been used. He also did not recall which officers were ahead of him during the entry, though he speculated that the bunker officers would enter first; Cpt. Lipetri usually “falls into the middle” of the team when they enter.

§ 87(2)(b) was standing in a hallway that was immediately beyond the second door. Cpt. Lipetri could not estimate the hallway's exact width or length, but noted that it was “tight” and that there was much

clutter on the floors, including trash, clothes and boxes. § 87(2)(b) was approximately 5-8 feet away from the door that the officers entered, at the foot of a staircase. When he first entered, Cpt. Lipetri saw several officers—he could not recall which ones—grab § 87(2)(b) and attempt to place him on the ground. § 87(2)(b) was refusing to get on the ground; when questioned directly, Cpt. Lipetri could not describe § 87(2)(b) level of resistance. Cpt. Lipetri specified that, during entries, the bunker team will initially “engage” residents but then pass them on to other officers because the bunker officers must first secure the premises. An officer passed off § 87(2)(b) to him (Cpt. Lipetri).

At the point at which he was passed off, § 87(2)(b) was standing but was on his way towards the ground. Cpt. Lipetri restrained § 87(2)(b) by grabbing his right arm and attempting to place it behind his back. At this point, another officer(s) was also grabbing § 87(2)(b) but Cpt. Lipetri did not know which officer this was. Cpt. Lipetri brought § 87(2)(b) to the ground, where § 87(2)(b) lay on his stomach. Cpt. Lipetri was also on the ground; at some points, he was next to § 87(2)(b) at other points he was on top of him. Cpt. Lipetri did not see where § 87(2)(b) left arm was located. The right arm was underneath a pile of garbage and clothes that was at the foot of the stairs, leading to a second floor. § 87(2)(b) refused to comply with Cpt. Lipetri’s commands to put his hands behind his back. Cpt. Lipetri and his fellow officer(s) were having trouble getting it behind his back because § 87(2)(b) would not place his arm behind his back and he was a very large individual. Cpt. Lipetri attempted to pull back § 87(2)(b) arm for several seconds. He applied the cuff on § 87(2)(b) right arm, but could not recall which officer applied the other handcuff. Cpt. Lipetri did not use any additional force against § 87(2)(b). He denied that he or any other officer kicked § 87(2)(b). Neither he nor another officer ever used the word “fuck.”

Once cuffed, § 87(2)(b) complained of breathing difficulty so Cpt. Lipetri placed § 87(2)(b) on his side. § 87(2)(b) informed Cpt. Lipetri that he had asthma and also complained of a shoulder injury. Cpt. Lipetri immediately called for an ambulance, which responded minutes later. At some point prior, the officers lifted § 87(2)(b) from the ground and transferred him to the kitchen where he was seated. EMS provided § 87(2)(b) with his asthma pump and an oxygen mask. About 15 minutes later, EMS transported him to the hospital and Cpt. Lipetri did not see § 87(2)(b) again.

§ 87(2)(b) and § 87(2)(b) were arrested and transported to the 81st Precinct stationhouse. A male minor was released to an adult relative of the § 87(2)(b) who lived upstairs; Cpt. Lipetri did not know if this adult’s apartment was searched. Once the perpetrators had been removed, the officers searched the ground floor and basement for contraband. Several envelopes of heroin were recovered. The officers also searched a safe, though Cpt. Lipetri was not sure how it was opened. Cpt. Lipetri was not present when the § 87(2)(b) and § 87(2) were logged in at the stationhouse, nor did he know whether they were strip-searched. He could not recall whether he went to the stationhouse.

Det. James Delumen

§ 87(2)(a) 160.50

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

CCRB Statement

Det. James Delumen a § 87(2)(b) male white officer assigned to the Narcotics Borough Brooklyn North, was interviewed at the CCRB on March 11, 2008 (encl. 25). On December 1, 2007, he was assigned to execute a search warrant for narcotics at § 87(2)(b). He was assigned to the Bunker, a post in which he is the first officer that enters and clears the warrant location. He was dressed in plainclothes, but

wore a marked heavy vest, helmet and shield. In his memo book, he noted that four arrests were made at § 87(2)(b) at 6:15am, and that he was en route to the 81st Precinct stationhouse at 9:15pm.

On December 1, 2007 at or about 6:00am, Det. Delumen and his team went to § 87(2)(b) to execute a search warrant. § 87(2)(b) is a private house; there are apartments on the upper floors, but the warrant only concerned the ground floor and basement. Det. Delumen noted that the ground floor was actually a two-story, modified set-up and that there were two bedrooms on the second story that were only accessible through the ground floor. Det. Delumen had been aware of this layout when he requested the warrant.

The officers used a Kelly tool to open the outer front door. Det. Galati attempted to use the hydro tool to open the second door, but § 87(2)(b) opened it. Det. Delumen was the first officer to enter the apartment. He did not see the order in which subsequent officers entered, however, he heard an officer behind him instruct § 87(2)(b) to lay on the ground. § 87(2)(b) immediately complied and laid face down on the ground near the stairway at the end of the hall; Det. Delumen did not know where § 87(2)(b) hands were at this point.⁷ Det. Delumen then proceeded down the hallway and turned left into § 87(2)(b) bedroom, in which his wife, § 87(2)(b) was located. She was handcuffed, and Det. Delumen exited the room.

When Det. Delumen exited the bedroom, he observed Cpt. Lepetri attempt to handcuff § 87(2)(b) who was lying on his side. § 87(2)(b) laid with his hands underneath his torso and refused to provide them. Cpt. Lepetri knelt over § 87(2)(b) and “tugged” at § 87(2)(b) arms. § 87(2)(b) did not say anything. No other officers were with Cpt. Lepetri or standing over him. Det. Delumen only observed this interaction for a few seconds and never observed an officer handcuff § 87(2)(b). He also never observed an officer grab § 87(2)(b) throat, nor did he observe an officer kick the back of § 87(2)(b) head.

Several additional people, including § 87(2)(b) and § 87(2)(b) § 87(2)(b) were handcuffed. Officers then began to search the apartment, including the basement, ground floor and second floor extension. Within about 5-10 minutes of the officers’ arrival, § 87(2)(b) complained of asthma and an ambulance was called. § 87(2)(b) neither incurred nor complained of any other injuries. The other family members were taken to the 81st Precinct a few minutes after they were handcuffed. Det. Delumen did not accompany them and did not know who did. Glassine envelopes of heroin were recovered on § 87(2)(b) person, the basement and the living room. Canine units responded after the prisoners had been transported, but they were not present for the initial entry. Det. Delumen searched through a metal safe that was recovered from the bedroom. A Kelly tool was used to open it, but no narcotics were recovered. Det. Delumen never said, nor did he hear another officer say, “I’m not giving you shit,” nor did any officer use other profanity.

Later that day, Det. Delumen returned to the 81st Precinct stationhouse and saw that § 87(2)(b) was in the cells. § 87(2)(b) and § 87(2)(b) were in the muster room with some officers from the field team. None of these civilians were strip-searched. When presented with § 87(2)(b)’s arrest report, which noted that her arrest was voided, Det. Delumen acknowledged that arrest report had been voided after the officers determined that § 87(2)(b) was not involved in the narcotics. The officers learned this after debriefing her at the stationhouse and Det. Delumen acknowledged that she had not been part of his investigation into the warrant.

Sgt. Daniel Sbarra

Sgt. Daniel Sbarra, a § 87(2)(b) male white assigned to Narcotics Borough Brooklyn North, was interviewed at CCRB on February 20, 2008 (encl. 20). On December 1, 2007, he was assigned to a search warrant team. Sgt. Sbarra was assigned to the ram. Sgt. Sbarra was dressed in plainclothes and assigned to a white “jump-out cargo” van. Sgt. Sbarra did not have any entries regarding this incident in his memo book.

On December 1, 2007 at 6:00a.m., Sgt. Sbarra and his field team executed a Kings County no-knock search warrant for heroin and crack at § 87(2)(b). Sgt. Sbarra reviewed a copy of the warrant data entry

⁷ Det. Delumen identified this as the area immediately in front of the stairway on CCRB case file photograph 6D (encl. 11f).

form and confirmed that the warrant was a no-knock warrant requested by Det. Delumen for § 87(2)(b) § 87(2)(b). Sgt. Sbarra described the building as a 3-story house with a basement. He could not say whether the individual floors were separate apartments, but noted that the officers searched the parlor floor and basement.

§ 87(2)(b) opened the door as Det. Galati was trying to use the rabbit tool. When § 87(2)(b) opened the door, the field team entered. Sgt. Sbarra was the last person to enter. Once inside, he observed Cpt. Lipetri and another officer wrestling with § 87(2)(b) on the floor in the hallway that is immediately present upon entry into § 87(2)(b). During his CCRB interview Sgt. Sbarra viewed CCRB case file photo 6D (*encl. 11f*) and confirmed that § 87(2)(b) was on the ground in front of the staircase. Sbarra noted that it was a small space and there was not much room for anyone to move around. He could not tell whether § 87(2)(b) was on his stomach or his back. Cpt. Lepetri was “rolling on the ground with him.” The officers “grappled” with § 87(2)(b). He could not see the part of § 87(2)(b) body that Cpt. Lepetri grabbed. Sgt. Sbarra had no involvement in this fight. Neither he nor other officers ever kicked § 87(2)(b) or placed an arm against his neck. He also never heard an officer use profanity at § 87(2)(b). After observing the struggle for a few seconds, he followed the bunker team into the residence.

§ 87(2)(b) was ultimately taken to the “kitchen part” of the large room and sat down by officers near a table. Sgt. Sbarra did not question § 87(2)(b) and did not know whether other officers did. § 87(2)(b) stated that he could not breathe because he had asthma. He also complained of injuries to his back due to the officers, but he did not specify who injured him. Cpt. Lepetri called an ambulance for § 87(2)(b) within minutes of the officers’ response because § 87(2)(b) claimed that he could not breathe. Within five minutes of calling the ambulance, it responded. Sgt. Sbarra never saw any other adult males in the apartment. The officers searched the parlor floor and the basement. Narcotics were recovered but Sgt. Sbarra did not know from where or who recovered them. He did not recall whether he or any officer searched a safe or used a sledgehammer to open a safe. Sgt. Sbarra was at the location for several hours. He did not personally transport any perpetrators from the location.

§ 87(2) and § 87(2)(b) were arrested and transported to the stationhouse. He did not transport them, but later returned to the 81st Precinct stationhouse to process the arrests. He was not present at the front desk when they were logged into the command log, and noted that officers from the prisoner van and the 81st Precinct desk sergeant would have been present. Sgt. Sbarra could not recall where § 87(2)(b) and § 87(2)(b) were when he arrived, but assumed that they were in the cells. He did not know whether they were strip-searched. If they were, then Sgt. Sbarra would have authorized it. When noted that § 87(2) was released because “upon further investigation § 87(2)(b) was found not to have committed the offense charged” Sgt. Sbarra said she was released because officers lost the probable cause, which had initially been based on the fact that she was inside of a search warrant location where narcotics was recovered. He then asserted that § 87(2) was not strip searched (though he could still not recall whether § 87(2)(b) was) either before or after the arrest was voided, and that he released § 87(2) to her uncle without any arrest processing.

Det. Frank Galati

Det. Frank Galati was interviewed at the CCRB on June 3, 2008 (encl. 32). On December 1, 2007, he was assigned as the RAM/Rabbit entry officer. He worked in plainclothes with a raid jacket from 4:30am until 1:00pm. Det. Galati did not bring his memo book to his interview.

Det. Galati was consistent with other officers regarding the initial entry. He noted that § 87(2)(b) opened the door and that the bunker officers and supervisors entered first. § 87(2)(b) initially moved several steps back and complied when officers instructed him to get on the ground. After the bunker officers entered, Cpt. Lipetri entered and attempted to handcuff § 87(2)(b). Cpt. Lipetri applied a cuff to one of § 87(2)(b) wrists, but he began to resist by lying face-down and keeping his other arm under his stomach. He refused to provide this arm and tried to pull down the arm that was already cuffed. Cpt. Lipetri grabbed these arms. He was crouched over § 87(2)(b) with one knee on the ground. After several seconds, Det. Galati came to assist Cpt. Lipetri. He knelt down and attempted to grab one of § 87(2)(b) arms—he could not recall which one—while Cpt. Lipetri grabbed the other. Both officers pulled the arms behind § 87(2)(b) back and ultimately placed him in handcuffs after struggling for

approximately 30 seconds. Other than grabbing § 87(2)(b) arms, Det. Galati did not use any additional methods to effect the arrest. He did not kick § 87(2)(b) arm. Neither he nor any other officer told § 87(2)(b) to put his “fucking hands” behind his back.

After § 87(2)(b) was handcuffed, he said that he could not breathe. The officers called for an ambulance, which arrived minutes later. Two officers transported him to the hospital. Det. Galati acknowledged that § 87(2)(b) and § 87(2)(b) were arrested. Two male children were present, but Det. Galati was unsure of what action was taken with regard to them. Det. Galati did not participate in the search. Once the search was completed, he returned with his field team to the 81st Precinct stationhouse. Sgt. Sbarra was with him at the front desk. Det. Galati did not know whether any prisoners were strip searched.

PO Tanisha Phillips

PO Tanisha Phillips, a § 87(2)(b) female black assigned to Brooklyn North Narcotics, was interviewed at the CCRB on April 18, 2008 (encl. 29). On December 1, 2007, PO Phillips worked from 5:00am until 1:27pm. She was assigned to rear security for a search warrant. PO Phillips did not bring her memo book to her CCRB interview.

PO Phillips responded to § 87(2)(b) to execute a search warrant. She was assigned to rear security with PO Killilea. They were not present when the other officers made entry through the front of the building. About 2 minutes after the initial entry, an unrecalled officer radioed to them that the premises were secure and they could enter. When she entered, § 87(2)(b) was sitting in the back of the living room and was in handcuffs. § 87(2)(b) stated that he had asthma and that an ambulance was called. PO Phillips went to the room on the left, in which § 87(2)(b) was located and had already been handcuffed. § 87(2)(b) was calm and remained seated on her bed. No other civilians entered this room. PO Phillips remained with her for an hour. PO Phillips did not participate in the search.

After an hour, the officers left together in a van. PO Phillips later conceded that she could not recall whether any officers remained behind. She stated that she sometimes operates the prisoner van and may have transported § 87(2)(b) and § 87(2)(b). She did affirm that she was present at the front desk with § 87(2)(b) and § 87(2)(b) when they were logged into the 81st Precinct. She also stated that Sgt. Sbarra was present and that he authorized a strip search. PO Phillips escorted both females to the back of the precinct near the holding cells. She could not recall the exact room where the strip searches were conducted, but recalled that it was sealed off. She was the only officer present for the strip searches because she was the only female on the team that executed the warrant. PO Phillips instructed both women to remove their pants and to lift up their shirts. No narcotics were recovered during this strip search.

Det. Matthew Savage, Det. Andrew Erato & Det. Robert Livingston

Det. Matthew Savage and Det. Andrew Erato were both interviewed at the CCRB on April 18, 2008 (encl. 30-1). On December 1, 2007, both officers were assigned to Bunker-2 during the execution of a search warrant. They were dressed in plainclothes and worked from 4:27am until 1:00pm. Det. Erato noted in his memo book that he was present for a warrant execution at § 87(2)(b) at 6:15am. Det. Savage did not provide his memo book entries to the CCRB. Det. Robert Livingston was interviewed at the CCRB on May 22, 2008 (encl. 27). He conducted animal control because the officers had received information that a pit bull was on the premises. He wore a raid jacket with other casual plainclothes. In his memo book, Det. Livingston noted that he made entry at § 87(2)(b) at 6:00am. He was en route to the hospital with Det. Savage at 6:30am. At 7:00am, they arrived at the hospital and they left the hospital en route to the 81 PCT stationhouse at 12:30pm.

The above officers were consistent on the main points elucidated by the other officers. They acknowledged that officers struggled to place § 87(2)(b) in handcuffs, but could not recall the identity of these officers. Det. Livingston also acknowledged that he transported § 87(2)(b) to the hospital. The above-referenced officers all denied using profanity and all claimed to have no knowledge of whether a strip-search was conducted.

Police Documents

A no-knock **search warrant** for was signed by The Honorable Judge § 87(2)(b) on § 87(2)(b) (encl. 21). The warrant listed § 87(2)(b) as the premises that were subject to the search. The **search warrant pre-execution plan** lists the following officers: Cpt. Lipetri, Lt. Santangelo, Det. Delumen, Det. Khan, Det. Savage, Det. Erato, Sgt. Sbarra, Det. Galati, Det. Livingston, PO Dean, PO Phillips and PO Killilea (encl. 33). The **field test report** confirmed that the vouchered narcotics were, in fact, heroin (encl. 36). § 87(2)(e), § 87(2)(f)

§ 87(2)(b) The **81st Precinct command log** notes that § 87(2)(b) and § 87(2)(b) were logged in at 7:30am. § 87(2)(b) was released at 10:45am. The log notes that Sgt. Sbarra authorized a strip search for § 87(2)(b) though no notation was made for § 87(2)(b) arrest was logged in at 7:55am, but it noted that he was actually at the hospital until 11:20am. He complained of asthma and shoulder pain. Three glassines of heroin, each with a different labeling, were listed on **property voucher** § 87(2)(b) (encl. 35). The glassines were listed as Elegante, Xquizit and Goya. A dagger and sheath were documented on **voucher** § 87(2)(b) and a false outlet trap was noted on **voucher** § 87(2)(b). Voucher § 87(2)(b) recorded that \$3,191 was vouchered as forfeiture and believed to be proceeds of narcotics sales.

CCRB and Conviction History of Complainant

Prior to this incident, § 87(2)(b) had not filed any complaints against NYPD officers (encl. 8). § 87(2)(c)

Substantiated CCRB allegations that resulted in the imposition of discipline

Sgt. Sbarra has a 10-year tenure with the NYPD (encl. 7). In 200410530, the Board substantiated the following allegations against Sgt. Daniel Sbarra: vehicle stopped, vehicle searched, force, offensive language, discourteous word, and refusal to provide name and shield number. The NYPD dispositions for these allegations are unavailable. The Board also substantiated allegations of discourteous word and physical force against Sgt. Sbarra in 200504276; no NYPD dispositions are available for these allegations. Cpt. Lipetri has 14 years of service with the NYPD. The Board substantiated an allegation of a discourteous word against Cpt. Lipetri in 200201651 (encl. 5). The NYPD imposed a penalty of command discipline, schedule A. Det. Frank Galati is a 6-year veteran with the NYPD (encl. 6). In 200702669, the Board substantiated allegations that he refused to provide his name and shield and that he unlawfully questioned an individual. As of the date of this report, no disposition was available from the NYPD.

Conclusions and Recommendations

Officer Identification

Based on the officer statements and the tactical documents prepared for the entry, Cpt. Lipetri was the ranking officer that supervised the warrant execution at § 87(2)(b). Therefore, the allegation regarding the entry and search of § 87(2)(b) is pleaded against Cpt. Lipetri. § 87(2)(b) claimed that an officer he identified as a sergeant and picked out in a photo array as Sgt. Daniel Sbarra tackled him, laid on his back and tried to pull his arms behind his back. However, all officers identified Cpt. Lipetri, and not Sgt. Sbarra, as this officer. § 87(2)(b) stated that the officer claimed to be the supervisor of the warrant execution which would apply more to Cpt. Lipetri. Accordingly, a force allegation is pleaded against Cpt. Lipetri. § 87(2)(b) claimed that the same officer later said, "I don't give a fuck." However, as he attributed the prior allegation of physical force for which Cpt. Lipetri was responsible to Sgt. Sbarra, it is unclear if § 87(2)(b) accurately recalled which officer allegedly said, "I don't give a fuck." During his photo array, § 87(2)(b) indicated that he had seen both officers on multiple occasions and it is quite possible that he confused their roles in the incident on December 1, 2007. Accordingly, the discourtesy allegation is pleaded against "an officer."

§ 87(2)(b) claimed that a 230lb. male white officer stood over him as the supervising officer tried to place him in handcuffs, and that this officer kicked his arm and told him to put his “fucking hands” behind his back. Det. Galati, who matches this physical description, admitted that he was the second—only other—officer who assisted Cpt. Lipetri in handcuffing § 87(2)(b). Therefore a force allegation and a discourtesy allegation are pleaded against Det. Galati. § 87(2)(b) claimed that a female officer strip-searched her and her mother at the 81st Precinct stationhouse. PO Phillips confirmed that she conducted the strip-search and insisted that Sgt. Sbarra authorized it. Therefore, a strip-search allegation is pleaded against Sgt. Sbarra. As there is no indication of which officers cut open the sofa, damaged the picture frames or broke the safe, a property damage allegation is pleaded against “officers.”

Allegations not pleaded

A chokehold allegation is not being pleaded. Although § 87(2)(b) claimed that Cpt. Lipetri “choked” him, he did not articulate details that were consistent with a chokehold when questioned directly.

Undisputed Facts

Officers entered § 87(2)(b) pursuant to a valid search warrant. § 87(2)(b) answered the front door and was at the hallway by the entrance when the officers entered. Officers verbally told § 87(2)(b) to get down to the ground. Cpt. Lipetri and other (unidentified) officers made physical contact with him; Cpt. Lipetri specifically placed § 87(2)(b) face-down on the ground. Cpt. Lipetri and an unidentified officer struggled with § 87(2)(b). Cpt. Lipetri grabbed § 87(2)(b) arms and attempted to place it behind his back, but § 87(2)(b) tried to prevent the officer from doing so. § 87(2)(b) was ultimately placed in handcuffs. He complained of shortness of breath and officers called an ambulance, which came and transported him to § 87(2)(b) Hospital. Officers searched the apartment and found heroin. § 87(2)(a)

Facts in Dispute

The degree of force used against § 87(2)(b) is in dispute. It is also disputed as to whether an officer ever used profanity towards him. It is also disputed if § 87(2) and § 87(2)(b) were strip-searched. The extent and sources of the damage to § 87(2)(b) property is also in dispute.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(g)

[illegible]

Allegation A: Cpt. Michael Lipetri authorized the entry and search of § 87(2)(b)

As established above, officers from Narcotics Borough Brooklyn North executed an entry and search at § 87(2)(b) pursuant to a lawful search warrant. The warrant was obtained by Det. Delumen and signed by the Honorable Justice § 87(2)(b) on § 87(2)(b) and executed within one week. The warrant location was specified as § 87(2)(b) a private 4-story house. Cpt. Lipetri supervised the execution of this warrant. § 87(2)(g)

Allegation B: Cpt. Michael Lipetri used physical force against § 87(2)(b)

Allegation C: Det. Frank Galati used physical force against § 87(2)(b)

§ 87(2)(b) resisted arrest by lying face-down on his arms to prevent the officers from placing him in handcuffs. Cpt. Lipetri attempted to pull § 87(2)(b) arms back and Det. Galati came over and also pulled on his arms in an effort to place § 87(2)(b) in handcuffs. Per Penal Law 35.30, “A police officer...in the course of effecting or attempting to effect an arrest...of a person whom he or she reasonably believes to have committed an offense, may use physical force when and to the extent he or she reasonably believes such to be necessary to effect the arrest” (*encl. 2*). Patrol Guide procedure 203-11, Use of Force, also articulates that an officer may use the “minimal amount of necessary force” to effect an arrest (*encl. 1*). § 87(2)(g)

ated.

Allegation D: Det. Frank Galati spoke rudely to § 87(2)(b)

Allegation E: An officer spoke rudely to § 87(2)(b)

§ 87(2)(b) alleged that Det. Galati said, “Put your hands behind your fucking back,” and that an officer, of whose identification he was inconsistent, later said, “I don’t give a fuck.” § 87(2)(g)

Allegation F: Officers damaged property belonging to § 87(2)(b) and § 87(2)(b)

§ 87(2)(b) alleged that officers broke a safe that he had in his apartment and that, when they returned home, numerous items had been strewn about the apartment. § 87(2)(g)

Allegation G: Sgt. Daniel Sbarra authorized the strip search of § 87(2)(b) and § 87(2)(b)

Although § 87(2)(b) did not complain that she was strip-searched, § 87(2)(b) stated that both women were strip-searched by an officer later identified as PO Phillips. PO Phillips acknowledged that she conducted the strip searches at the behest of Sgt. Sbarra. Patrol Guide procedure 208-05 governs the conditions under which an officer may conduct a strip search (*encl. 3*). As per this procedure, an officer may conduct a strip search when he or she “reasonably suspects that weapons, contraband or evidence may be concealed upon the person or in the clothing in such a manner that they may not be discovered by the previous search methods. Other factors that should be considered in determining the necessity for a strip search include the nature of the crime.” § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b) [Redacted]
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Supervisor:	Date:
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